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**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

KEN LANDOW, KEN LANDOW IRA, KEN
 LANDOW ASSOCIATES LIMITED
 PARTNERSHIP,

Plaintiff,

vs.

ALVERY A BARTLETT, JR. AND
 BERTHEL FISHER & COMPANY
 FINANCIAL SERVICES INC.,

Defendants.

Case No.:

NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA:

Pursuant to 28 U.S.C. §§ 1441 and 1446, defendant Berthel Fisher & Company Financial Services Inc. ("Berthel"), removes this action to the United States District Court for the District of Nevada. Pursuant to 28 U.S.C. § 1332, Berthel states the grounds for removal as follows:

1. Pursuant to 28 U.S.C. §1332, diversity of citizenship exists:

a. Complete diversity of citizenship exists as follows:

i. Plaintiff Ken Landow (“Landow”) is domiciled in the state of Nevada, as set forth in Paragraph 1 of the Complaint. **Exhibit A**, Complaint and Summons at ¶ 1.

ii. Because Landow brings this action in his own name on behalf of the Ken Landow IRA (the “IRA”) his own citizenship is all that is considered for purposes of diversity jurisdiction. *FBO David Sweet IRA v. Taylor*, 4 F.Supp.3d 1282, 1284 (E.D. Ala. 2014) (“An IRA is a trust created in the United States for the exclusive benefit of the individual or his beneficiaries.”); *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 462–66, 100 S. Ct. 1779, 1782–84, 64 L. Ed. 2d 425 (1980) (“trustees of an express trust are entitled to bring diversity actions in their own names and upon the basis of their own citizenship.”). To the extent the IRA itself has commenced this action, its citizenship consists of each of its members, who appear to be Ken Landow (the trustee) and the IRA’s two beneficiaries, University of California, Los Angeles, David Geffen School of Medicine (“UCLA”) and University of Southern California, Department of Dermatology – Keck School (“USC”). See **Exhibit B**, Premiere Select IRA Application (identifying trustee and beneficiaries); **Exhibit C**, Declaration of Alvery A. Bartlett, Jr. at ¶ 3 (the “Bartlett Decl.”); *Americold Realty Tr. v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1015–16 (2016) (the citizenship of members of a trust determines the citizenship of the trust). Landow is a citizen of Nevada, UCLA is a citizen of California and USC is a citizen of California. See **Exhibit D**, California Secretary of State Entity Details for The Regents of The University of California; **Exhibit E**, California Secretary of State Statement of Information for University of Southern California. Thus, for purposes of diversity jurisdiction, the IRA is a citizen of California and Nevada.

iii. Plaintiff Ken Landow Associates Limited Partnership (“KLA”) is a Nevada limited partnership. See **Exhibit F**, Nevada Secretary of State Entity Details for Ken Landow Associates Limited Partnership. The citizenship of a limited partnership is based on the citizenship of each of the general and limited partners. *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195, 110 S. Ct. 1015, 1021, 108 L. Ed. 2d

1 157 (1990). Ken Landow is a limited partner who is domiciled in Nevada. See Compl.
2 (Ex. A) at ¶ 1. R. Scott Faley is, upon information and belief, a general partner who is
3 domiciled in Maryland. (Ex. F). Elaine Galatz is, upon information and belief, a general
4 partner who is domiciled in Nevada. (Ex. F). Thus, for diversity purposes, KLA is a
5 citizen of Nevada and Maryland.

6 iv. Defendant Alvery A. Bartlett, Jr. ("Bartlett") is a citizen of and
7 domiciled in the state of Missouri and no other state. Bartlett Decl. (Ex. C) at ¶ 4.

8 v. Defendant Berthel is incorporated and holds its principal
9 place of business in Iowa. See **Exhibit G**, Iowa Secretary of State, Business Entity
10 Summary for Berthel Fisher & Company Financial Services Inc. A corporation is
11 deemed to be a citizen of the state of incorporation and where it has its principal place
12 of business. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). As such, Berthel is a
13 citizen of Iowa.

14 Thus, complete diversity exists between Plaintiffs (Nevada, California and
15 Maryland) and Defendants (Iowa and Missouri).

16 b. For jurisdictional purposes, the amount in controversy is
17 determined by the amount at issue in the underlying litigation. *Theis Research, Inc. v.*
18 *Brown & Bain*, 400 F.3d 659, 662 (9th Cir. 2005). Here, Plaintiffs seek to recover
19 damages of not less than \$6,637,918.00. Compl. (Ex. A) at ¶¶ 21, 37, 46, 61. Thus,
20 Plaintiffs seek damages in excess of the \$75,000.00 jurisdictional threshold under 28
21 U.S.C. § 1332(a).

22 Accordingly, this Court has jurisdiction over these claims pursuant to 28 U.S.C. §
23 1332 because the parties are citizens of different states and the amount in controversy
24 exceeds \$75,000.00. This Court's jurisdiction is thus proper pursuant to 28 U.S.C. §
25 1441(b).

26 2. All defendants consent to removal. Bartlett Decl. (Ex. C) at ¶ 5.
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1 3. This removal notice is timely. Berthel was served with a copy of the
2 summons and complaint on February 28, 2018. This Notice of Removal, being filed
3 within 30 days of that date, is timely filed pursuant to 28 U.S.C. § 1446(b).

4 4. Plaintiffs filed the action on January 18, 2018; thus, one year has not
5 elapsed from the date the action in state court commenced.

6 5. Venue is proper in the unofficial Southern Division of this district pursuant
7 to 28 U.S.C. § 1441 (a) because this district embraces the place where the state court
8 action is pending.

9 6. Pursuant to 28 U.S.C. § 1446(a), a copy of all pleadings filed in the state
10 court action as of this date are attached hereto as follows: Complaint and Summons
11 (Ex. A).

12 7. Promptly after filing this Notice, Berthel will file a copy of it with the clerk of
13 the state court in which this action is pending and will give written notice to the
14 Plaintiffs, as required by 28 U.S.C. § 1446(d).

15 8. This Notice of Removal is executed and filed pursuant to Fed. R. Civ. P.

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1 WHEREFORE, Berthel removes the above-entitled action now pending in the
2 Eighth Judicial District Court, Clark County, Nevada, Case No. A-18-767962, to the
3 United States District Court for the District of Nevada.

4 DATED this 19thth day of March, 2018.

5 McDONALD CARANO LLP

6 By: /s/ Amanda M. Perach

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25 *Attorneys for Berthel Fisher & Company*
26 *Financial Services Inc.*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and that I served a true and correct copy of the foregoing **NOTICE OF REMOVAL** on this 19th day of March, 2018 by depositing said copies in the United States Mail, postage prepaid thereon, and via the Court's electronic filing system upon the following:

David Liebrader, Esq.
The Law Offices of David Liebrader, Inc.
601 South Rancho Drive, Suite D-29
Las Vegas, Nevada 89106

Attorneys for Plaintiffs

/s/ Kimberly Kirn

An employee of McDonald Carano LLP

INDEX OF EXHIBITS

<u>Description</u>	<u>Exhibit No.</u>
Complaint and Summons	A
Premiere Select IRA Application	B
Declaration of Avery A. Bartlett, Jr.	C
California Secretary of State Entity Details for The Regents of The University of California	D
California Secretary of State Statement of Information for University of Southern California	E
Nevada Secretary of State Entity Details for Ken Landow Associates Limited Partnership	F
Iowa Secretary of State, Business Entity Summary for Berthel Fisher & Company Financial Services Inc.	G